



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2005

Ms. Carol Longoria  
The University of Texas System  
Office of General Counsel  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2005-04616

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224892.

The University of Texas at El Paso (the "university") received a request for "[t]he first 49 pages of the [university's] Police Policy and Procedures manual." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Because the applicability of section 552.108 is potentially the most broad, we will consider this argument first. Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution." Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.).

To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562

at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You note that the submitted manual details university police guidelines “outlining driving routes taken by officers transporting an arrestee in need of medical attention, procedures for searching arrestees, points of entry for transporting arrestees to jail facilities, locations for securing weapons and bullets prior to entry into the jail, . . . criteria to be used by officers when determining whether to issue a criminal trespass warning[.]” and other such procedures. Upon review of the submitted records and your arguments, we agree that most of the information you have marked consists of detailed police procedures the release of which would interfere with law enforcement. Therefore, we have indicated in the submitted records the information that the university may withhold pursuant to section 552.108(b)(1).<sup>1</sup> As for the remaining information, we find that you have failed to explain how its release “would interfere with law enforcement or prosecution.” Thus, none of the remaining submitted information may be withheld pursuant to section 552.108(b)(1).

You also claim that the phone numbers in the submitted records are excepted from required public disclosure under section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the university may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The university must withhold the home telephone if the employees to whom the phone numbers relate timely elected to keep their personal information confidential. The university may not withhold this information under

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<sup>1</sup>Because we reach this conclusion, we need not address your remaining claim for this information.

<sup>2</sup>You acknowledge that the university failed to raise section 552.117 within the ten business day deadline mandated in section 552.301(b). *See* Gov’t Code § 552.301(b). However, because section 552.117 is a mandatory exception that can provide a compelling reason to withhold information, we will address your arguments regarding this section. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302).

section 552.117 if these employees did not make a timely election to keep this information confidential.

However, we also understand you to claim that, if these employees did not make a timely election to keep the information confidential, their home telephone numbers are nonetheless confidential in this case under section 552.101.<sup>3</sup> In prior decisions, this office has held that information may be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy upon a showing of certain “special circumstances.” *See* Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* In this case we find that you have demonstrated the existence of such “special circumstances.” Therefore, the university must withhold the employees’ home telephone numbers that you have marked even if those employees did not make a timely election under section 552.024.

In summary, the university may withhold the marked information in the submitted manual pursuant to section 552.108(b)(1) of the Government Code. The university must withhold the employees’ home telephone numbers that you have marked under section 552.117, if that section applies. If section 552.117 does not apply, the university must withhold the home telephone numbers under section 552.101 in conjunction with common-law privacy. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>3</sup>Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy.

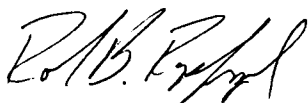
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 224892

Enc. Submitted documents

c: Mr. Michael Hernandez  
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(w/o enclosures)